

FILED

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

JULIE R. WEDDELL, CAROLE)
WEDDELL, and RAYMOND COURNOYER,)

Plaintiffs,)

v.)

WAGNER COMMUNITY SCHOOL)
DISTRICT 11-4; and WAYNE)
SCHERR, JOE HALL, JERRY SEINER,)
JANICE COLEMAN, NEIL VON)
ESCHEN, MICHAEL DENKER, and)
JAMES EGGERS, in their official)
capacities as members of the)
School Board in Wagner)
Community School District 11-4,)

Defendants.)

Civil Action No. 02-4056

COMPLAINT

NATURE OF THE CASE

1. This is an action to enforce Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973. The plaintiffs seek declaratory and injunctive relief prohibiting any further use of the current election plan in Wagner Community School District 11-4 in Charles Mix County, South Dakota, on the ground that it dilutes the voting strength of Native Americans.

JURISDICTION AND VENUE

2. This Court has original jurisdiction over this case pursuant to Article III of the United States Constitution and 28 U.S.C. §§ 1331 and 1343(a)(3) & (4), and 2201.

3. This suit is authorized by 42 U.S.C. §§ 1973j(f) & 1983.

4. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.

5. Venue is proper in the District of South Dakota pursuant to 28 U.S.C. § 1391(b).

PARTIES

6. Plaintiffs Julie R. Weddell, Carole Weddell, and Raymond Cournoyer are Native Americans, qualified electors, and residents of Wagner Community School District 11-4 in Charles Mix County, South Dakota.

7. Defendant Wagner Community School District 11-4 is a political subdivision of the state of South Dakota and is capable of suing and being sued in its own name.

8. Defendants Wayne Scherr, Joe Hall, Jerry Seiner, Janice Coleman, Neil von Eschen, Michael Denker, and James Eggers are members of the School Board in Wagner Community School District 11-4 and are responsible for the conduct of board elections in that district. They are sued in their official capacities only.

9. The defendants, both personally and through the conduct of their agents, servants and employees, were and are acting under color of state law at all times relevant to this action.

FACTS

10. The total population of Wagner Community School District 11-4 is 3,928 persons, of whom 1,668 (42%) are Native American.

11. Native Americans are 36% of the district's voting-age population.

12. Wagner Community School District 11-4 is governed by a School Board consisting of seven members elected at-large from within the district.

13. Terms of office for the School Board are three years and are staggered.

14. The next election for School Board in Wagner Community School District 11-4 is scheduled for June 2002, and, unless enjoined by this Court, the defendants will conduct the election using the current at-large plan.

15. Native Americans in Wagner Community School District 11-4 are sufficiently numerous and geographically compact that they could constitute a majority in one or more single-member districts for the election of the School Board.

16. Native Americans in Wagner Community School District 11-4 have organized themselves collectively for political activity.

17. Native Americans in Wagner Community School District 11-4 and South Dakota have common socioeconomic characteristics, a common and distinct history, a distinct quasi-sovereign tribal status, a unique political status under the treaties, laws, and executive orders of the United States, and a special trust relationship with the United States.

18. Candidates preferred by Native Americans in Wagner Community School District 11-4 are usually defeated by the white majority voting as a bloc.

19. Historically, Native Americans in Wagner Community School District 11-4 and South Dakota have been subject to private as well

as official discrimination on the basis of race, tribal, and language-minority status, including discrimination in the exercise of their right to vote and to participate equally with other residents in the political processes.

20. Native Americans in Wagner Community School District 11-4 and South Dakota bear the effects of discrimination on the basis of race and tribal status in education, housing, employment, and health services which have resulted in a lower socioeconomic status which hinders their ability to participate effectively in the political process.

21. Native Americans in Wagner Community School District 11-4 are politically cohesive in that they tend to vote as a bloc.

22. Voting in Wagner Community School District 11-4 is racially polarized.

23. Because of the at-large method of elections and polarized voting, Native Americans in Wagner Community School District 11-4 have been discouraged from running for the School Board.

24. Native Americans in Wagner Community School District 11-4 have less opportunity than other residents to participate in the political processes and to elect candidates of their choice.

25. The policy underlying at-large elections for the School Board in Wagner Community School District 11-4 is tenuous.

26. The existing at-large method of elections for the School Board in Wagner Community School District 11-4 denies or abridges the plaintiffs' right to vote on the basis of race, color, or membership in a language minority.

27. The only polling place used in school district elections is located in Wagner at the Wagner Community School, 101 SW Walnut Avenue.

CLAIM ONE

28. The current method of electing School Board members in Wagner Community School District 11-4 has the result and effect of denying or abridging the right of Native Americans to vote on account of race or color or membership in a language minority in violation of the plaintiffs' rights guaranteed by Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973.

CLAIM TWO

29. The number and location of the polling place has the result and effect of denying or abridging the right of Native Americans to vote on account of race or color or membership in a language minority in violation of the plaintiffs' rights guaranteed by Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973.

RELIEF

30. A real and actual controversy exists between the parties.

31. The plaintiffs have no adequate remedy at law other than this action for declaratory and injunctive relief.

32. The plaintiffs are suffering irreparable harm as a result of the violations complained of herein, and that harm will continue unless declared unlawful and enjoined by this Court.

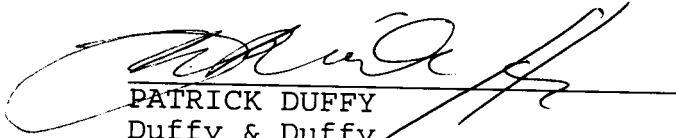
WHEREFORE, the plaintiffs respectfully pray that this Court:

- (1) take original jurisdiction over this case;
- (2) enter a declaratory judgment that the current method of electing School Board members in Wagner Community School District 11-4 violates Section 2 of the Voting Rights Act;
- (3) enter a declaratory judgment that the number and location of the polling place used in elections held in the Wagner Community School District 11-4 violates Section 2 of the Voting Rights Act;
- (4) enjoin the defendants from conducting any future elections for School Board members in Wagner Community School District 11-4 under the current election plan;
- (5) enjoin the defendants from conducting any future elections for School Board members in Wagner Community School District 11-4 using the present number and location of the polling place;
- (6) enjoin the defendants from failing to conduct elections for School Board members in Wagner Community School District 11-4 under an election plan that complies with Section 2 of the Voting Rights Act;
- (7) enjoin the defendant from failing to conduct elections using a polling place or places that comply with Section 2 of the Voting Rights Act;
- (8) in the event that the defendants fail or are unable to conduct elections in a timely fashion pursuant to an election plan that complies with Section 2 of the Voting

- Rights Act, implement a court-ordered election plan and schedule of elections;
- (9) award the plaintiffs the cost of this action together with their reasonable attorneys' fees pursuant to 42 U.S.C. §§ 19731(e) & 1988; and,
- (10) retain jurisdiction of this action and grant the plaintiffs any further relief which may in the discretion of this Court be necessary and proper to ensure that timely and lawful procedures are used in School Board elections in Wagner Community School District 11-4.

Respectfully submitted,

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